



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



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PUBLIC INSTRUCTION

MEMORANDUM

TO: Intermediate School District and Local Education Agency Directors of Special Education and Business Managers and Public School Academy Administrators

FROM: Jacquelyn Thompson, Ph.D., Director
Office of Special Education and Early Intervention Services

DATE: May 23, 2003

SUBJECT: Maintenance of Effort as required under the Individuals with Disabilities Education Act (IDEA)

Background

Since 1997-98, Michigan's grant award under the IDEA has increased by over 14 percent yearly. In conjunction with this increase has been the stabilization of state aid reimbursement paid to school districts as a result of the funding formula approved by the Michigan Supreme Court under the two Durant decisions. The two of these factors combined have caused many local and intermediate districts to be unable to maintain state and local effort in the provision of programs and services for pupils with disabilities.

The purpose of this memo is to provide information to local education agencies (LEA's) and intermediate school districts (ISD's) on how to calculate their own maintenance of effort (MOE) with respect to IDEA regulations, and how to invoke and document approved exceptions to the MOE requirement. This calculation applies only to IDEA funds and it is not the same as the state's calculation of MOE across all federal funds.

Federal Regulations cited in this document refer to State Education Agencies (SEA's) and Local Education Agencies (LEA's). The SEA is the Michigan Department of Education. An ISD is treated as an LEA in the calculation of maintenance of effort.

Maintenance of Effort Defined

Generally, the term "maintenance of effort" implies spending the same or a greater amount from a particular source of funds to maintain programs and services from one fiscal year to the next.

OSE/EIS-03-06

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IDEA requires that all local and intermediate school districts maintain state and local expenditure support in providing educational programs and services for pupils with disabilities as a condition for receiving the federal grant funds.

See attached C.F.R. 34 Section 300.231 (Attachment A).

Determination of Maintenance of Effort

The following steps should be followed in determining whether the ISD or LEA meets the MOE provision in IDEA. All of these steps are further described in this memo.

1. Calculate the district's expenditures to determine whether or not the district has maintained effort.
 - a. Calculate effort on a total cost basis
 - b. Calculate effort on a per capita basis (headcount, FTE)
2. If effort has not been maintained, review the acceptable exceptions to the MOE requirement.
3. If the allowable exceptions under Section 300.232 (See Attachment A) do not apply, review the treatment of federal funds provision under Section 300.233 (See Attachment A).
4. Contact the Office of Special Education and Early Intervention Services for additional technical assistance.

Please note: If the district did not receive IDEA funds, the MOE test/calculation does not apply.

Maintenance of Effort Calculated

To begin to calculate the district's MOE, review the Special Education Actual Cost Report (SE-4096) for the year in question and the immediate preceding fiscal year. A worksheet has been attached for your use (See Attachment B). ISD and LEA costs from the SE-4096 eligible for the MOE calculation include the totals reported on line 46 under both Section 52 and Section 53 minus any costs reported on lines 39 (Indirect Costs) and line 43 (Section 53 Pupil Transportation). To this total, the district may add any instructional costs paid out of local funds not eligible for state aid reimbursement, with appropriate documentation. An example of this type of cost might be the salary and fringe benefits for the time a split funded instructional aide works with special education students. Documentation for the inclusion of such costs must be attached to the worksheet.

If the total costs calculated above fall below the costs for the immediate preceding year, the district needs to determine if they have maintained effort on a per-capita basis. This may be done on either a headcount or full time equivalent (FTE) basis. To calculate the per-capita basis on headcount, the district must use their December 1 count from the two years in question. To calculate on a FTE basis, the district must use the total special education FTE as reported on the September pupil membership report for each year in question.

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Exceptions to Maintenance of Effort

ISD's or LEA's that do not maintain effort are in danger of having their IDEA funds reduced. If the district determines that it has not maintained effort either on a total cost basis or a per capita basis, the district should review the approved exceptions to see if they apply.

See attached C.F.R. 34, Section 300.232 Exceptions to Maintenance of Effort (Attachment A).

Please use the attached worksheet to determine if the above exceptions allow the district to comply with the MOE provision. For districts not able to take advantage of the exceptions above, optional treatment of federal funds under Section 300.233 should be considered.

Treatment of Federal Funds under Section 300.233

Section 300.233 allows a district to treat some federal funds as if they were local dollars for the purposes of calculating MOE. An ISD or LEA may treat as local funds for MOE purposes, up to 20 percent of the amount it receives that exceeds the amount it received under Part B during the prior year.

For example, if a LEA receives \$400,000 in Federal IDEA funds in Year 1 and then receives \$500,000 in Year 2, 20 percent of the increase, \$20,000, may be treated as local funds for MOE calculation purposes.

If none of the above calculations allow an ISD or LEA to maintain effort as required under IDEA regulations, please contact the Office of Special Education and Early Intervention Services for assistance.

If you have further questions regarding maintenance of effort issues, contact either Linda Domine at (517) 373-6309 or Norm Lupton at (989) 201-6095 (pager).

Attachment

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with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless it is explicitly permitted to do so under the State's charter school statute.

(c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §§ 300.711–300.714 if the agencies were eligible for these payments.

(Authority: 20 U.S.C. 1413(e)(1), and (2))

§ 300.191 [Reserved]

§ 300.192 Requirements for establishing eligibility.

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.121–300.156; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and

(2) Must be carried out only by that educational service agency.

(c) *Additional requirement.* Notwithstanding any other provision of §§ 300.190–300.192, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by § 300.130.

(Authority: 20 U.S.C. 1413(e)(3), and (4))

§ 300.193 [Reserved]

§ 300.194 State agency eligibility.

Any State agency that desires to receive a subgrant for any fiscal year under §§ 300.711–300.714 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and

projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(i))

§ 300.195 [Reserved]

§ 300.196 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, the SEA shall—

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.197 LEA and State agency compliance.

(a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in §§ 300.220–300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.

(b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.507–300.528 that is adverse to the LEA or State agency involved in the decision.

(Authority: 20 U.S.C. 1413(d))

LEA and State Agency Eligibility—Specific Conditions

§ 300.220 Consistency with State policies.

(a) *General.* The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.121–300.156.

(b) *Policies on file with SEA.* The LEA must have on file with the SEA the policies and procedures described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.221 Implementation of CSPD.

The LEA must have on file with the SEA information to demonstrate that—

(a) All personnel necessary to carry out Part B of the Act within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of §§ 300.380–300.382; and

(b) To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the State established under § 300.135.

(Authority: 20 U.S.C. 1413(a)(3))

§§ 300.222–300.229 [Reserved]

§ 300.230 Use of amounts.

The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of the Act—

(a) Will be expended in accordance with the applicable provisions of this part;

(b) Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with §§ 300.184–300.185; and

(c) Will be used to supplement State, local, and other Federal funds and not to supplant those funds.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.231 Maintenance of effort.

(a) *General.* Except as provided in §§ 300.232 and 300.233, funds provided to an LEA under Part B of the Act may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Information.* The LEA must have on file with the SEA information to demonstrate that the requirements of paragraph (a) of this section are met.

(c) *Standard.* (1) Except as provided in paragraph (c)(2) of this section, the SEA determines that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (c)(1)(i) of this section for any fiscal year

must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in—

(i) The most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997; or

(ii) If later, the most recent fiscal year for which information is available and the standard in paragraph (c)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.232 Exception to maintenance of effort.

An LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to the following:

(a)(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff.

(2) In order for an LEA to invoke the exception in paragraph (a)(1) of this section, the LEA must ensure that those voluntary retirements or resignations and replacements are in full conformity with:

(i) Existing school board policies in the agency;

(ii) The applicable collective bargaining agreement in effect at that time; and

(iii) Applicable State statutes.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(Authority: 20 U.S.C. 1413(a)(2)(B))

§ 300.233 Treatment of Federal funds in certain fiscal years.

(a)(1) Subject to paragraphs (a)(2) and (b) of this section, for any fiscal year for which amounts appropriated to carry out section 611 of the Act exceeds \$4,100,000,000, an LEA may treat as local funds up to 20 percent of the amount of funds it receives under Part B of the Act that exceeds the amount it received under Part B of the Act for the previous fiscal year.

(2) The requirements of §§ 300.230(c) and 300.231 do not apply with respect to the amount that may be treated as local funds under paragraph (a)(1) of this section.

(b) If an SEA determines that an LEA is not meeting the requirements of this part, the SEA may prohibit the LEA from treating funds received under Part B of the Act as local funds under paragraph (a)(1) of this section for any fiscal year, but only if it is authorized to do so by the State constitution or a State statute.

(Authority: 20 U.S.C. 1413(a)(2)(C))

§ 300.234 Schoolwide programs under title I of the ESEA.

(a) *General; limitation on amount of Part B funds used.* An LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any schoolwide program may not exceed—

(1)(i) The amount received by the LEA under Part B for that fiscal year; divided by

(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

(b) *Funding conditions.* The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §§ 300.230(b) and (c).

(2) The funds may be used without regard to the requirements of § 300.230(a).

(c) *Meeting other Part B requirements.* Except as provided in paragraph (b) of this section, all other requirements of Part B must be met by an LEA using Part

B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools—

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under the IDEA.

(Authority: 20 U.S.C. 1413(a)(2)(D))

§ 300.235 Permissive use of funds.

(a) *General.* Subject to paragraph (b) of this section, funds provided to an LEA under Part B of the Act may be used for the following activities:

(1) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

(2) *Integrated and coordinated services system.* To develop and implement a fully integrated and coordinated services system in accordance with § 300.244.

(b) *Non-applicability of certain provisions.* An LEA does not violate §§ 300.152, 300.230, and 300.231 based on its use of funds provided under Part B of the Act in accordance with paragraphs (a)(1) and (a)(2) of this section.

(Authority: 20 U.S.C. 1413(a)(4))

§§ 300.236–300.239 [Reserved]

§ 300.240 Information for SEA.

(a) The LEA shall provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§ 300.137 and 300.138, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(b) The LEA must have on file with the SEA an assurance satisfactory to the SEA that the LEA will comply with the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(6))

§ 300.241 Treatment of charter schools and their students.

The LEA must have on file with the SEA information to demonstrate that in carrying out this part with respect to charter schools that are public schools of the LEA, the LEA will—

(a) Serve children with disabilities attending those schools in the same

Michigan Department of Education
Office of Special Education and Early Intervention Services

Maintenance of Fiscal Effort Worksheet

District Code _____ District Name _____

Please note: If no IDEA funds were received by the district, the Maintenance of Fiscal Effort test/calculation does not apply.

I. Data Needed	Current Year _____	Preceding Year _____
a. December 1 Head Count	_____	_____
b. September FTE Count for Special Education	_____	_____
c. SE-4096 Section 52 + Section 53 Costs (Line 46 – (Lines 39 + 43))	_____	_____
d. IDEA Flowthrough Allocation	_____	_____

II. If Line 1c for the current year is less than the preceding year	<u>Current Year</u>	<u>Preceding Year</u>
a. Head Count Per Capita (Divide Line 1c by Line 1a)	_____	_____
b. FTE Count Per Capita (Divide Line 1c by Line 1b)	_____	_____

III. If Line 11a and 11b for the current year is less than the preceding year

Justification: See Federal Registry 300.232:

<u>Exception Code</u>	<u>Detailed Explanation</u>	<u>Amount(s)</u>
300.232 _____	1. _____ _____ _____	_____ _____ _____
	Total Maintenance of Fiscal Effort Justification	_____
300.232 _____	2. _____ _____ _____ _____	_____ _____ _____ _____

IV. If no exceptions apply . . .

- a. Take Line Id, current year minus preceding year _____
- b. Multiply Line IVa x 20% (.2) _____
- c. Add Line IVb to current year SE-4096 costs _____
- d. Compare current year costs with preceding year costs _____

Signature _____

Date _____

Title _____